

IN THE MATTER OF
THOMAS HINKEY - PETITIONER
FOR THE PROPERTY LOCATED AT
629 PLYMOUTH ROAD

1ST ELECTION DISTRICT
1ST COUNCILMANIC DISTRICT

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. 21-270-SPH

* * * * *

OPINION

This matter comes before the County Board of Appeals on a limited appeal of an Opinion and Order of the Administrative Law Judge dated December 17, 2021 granting special hearing relief for a non-conforming use of 629 Plymouth Road (the "Property") as six (6) dwelling units, subject to conditions.

The Petitioner, through its agent and real estate broker Benedict Frederick, III, appealed the imposition of the third condition in the Opinion and Order, which requires tenants of the Property to park in the garage attached to the rear of the building and not park on the public street.

A virtual public hearing was held on June 2, 2022. In addition to Mr. Frederick, attendees included Thomas Hinkey, Petitioner and former owner, and neighbors David Beall and Steven Stormont.

Mr. Frederick presented Petitioner's case, asserting that the use, first established in 1925, is a valid non-conforming use predating zoning in Baltimore County is not subject to the parking requirements of the Section 409 of the Baltimore County Zoning Regulations; in the alternative, if those regulations were deemed to apply, the Board should permit the existing parking arrangement under BCZR §409.12.B as a modified parking plan. Mr. Frederick also testified that the condition – requiring tenants to do or not do something – was beyond the landlord's ability to enforce.

As part of his presentation, Mr. Frederick introduced a location survey and a garage parking plan. The survey showed that the garage portion of the building occupies the entire rear yard, and that the garage could at most accommodate four parking spaces.

Upon questions from the Board, Mr. Frederick testified that the garage spaces are not rented to any outside third parties. Mr. Frederick testified that since the filing of the Petition, the Property has otherwise been brought into compliance with current Baltimore County Code requirements to be lead paint free and licensed as rental property.

Neighbor David Beall, who resides at 637 Plymouth Road, inquired of Mr. Frederick whether the garage is being rented to parties who do not reside at the Property, which Mr. Frederick indicated it was not.

The original Petitioner, Thomas Hinkey testified in support. Upon questioning by the Board, Mr. Hinkey told the Board that although his family has owned the property since the early twentieth century, he is no longer in title. In fact, he sold the Property in January, 2022, to Eligio Velez, an investor, who did not attend the hearing before the Board.

Mr. Beall also testified to his concerns regarding parking and the use of the garage, namely that it not be used by non-tenants of the Property. Also testifying was Mr. Stormont, who resides at 632 Plymouth Road, who expressed his concerns about the scarcity of parking. Mr. Stormont told the Board that there are various housing types on Plymouth Road, including single family, duplex and some multi-family dwellings. There is parking on both sides of the street.

The Board held a public deliberation immediately following the hearing.

While the Board members were sympathetic to the neighbors' concerns, the members agreed that the condition imposed by the Administrative Law Judge ("ALJ"), while aspirational,

is unenforceable and could not be maintained. The Board expressed the view that the Property owner should encourage use of the garage by tenants and not allow others to park there.

The fact that Petitioner was not represented by counsel created factual and procedural issues which complicated the case in deliberation.

First, the appeal, while timely filed and received by Baltimore County, was directed to the State Office of Administrative Hearings on Gilroy Road.

The current owner was not a party to the proceedings and not disclosed to the Board, raising a question of his standing to pursue the appeal. The Board heard the matter by allowing Mr. Frederick to act in representative capacity for the current owner. The alternative was to dismiss the appeal for lack of standing and have the condition remain as ordered by the ALJ.¹

The parking issue was never addressed in the petition, nor was any relief from the BCZR parking requirements requested as it should have been. Off-street parking is a separate requirement under the regulations. The better and correct procedure and the one favored by the law would be to seek a variance from the parking requirements to permit the existing on-site parking in lieu of that required under current regulations.

The Board finds the condition regarding parking untenable and will affirm the decision of the ALJ, removing the third condition requiring tenants to park in the garage and not on the street.

¹ The Board discussed the issue of enforcement regarding parking. In the view of the Board, the area residents may be more successful by pursuing relief under BCC §18-2-402 to create an area where residential parking permits are required for on-street parking. Under that provision, there is an enforcement mechanism.

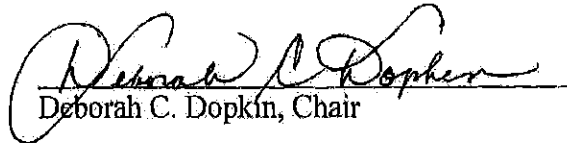
ORDER


THEREFORE, IT IS this 20th day of September, 2022, by the Board of Appeals for Baltimore County,

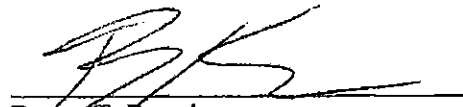
ORDERED, that the Petition for Special Hearing to continue to use the premises as six (6) dwelling units, two dwelling units on the first floor, two dwelling units on the second floor and two dwelling units on the third floor as a legal non-conforming use is hereby GRANTED, subject to the compliance by the Property Owner with the requirements of the Baltimore County Fire Prevention Code (County Council Bill No. 14-21), Baltimore County Code Article 35 Title 5 (Livability Code Subtitle 2 (Rental Housing), and Title 6 (Rental Housing Licenses).

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

**BOARD OF APPEALS
OF BALTIMORE COUNTY**


Deborah C. Dopkin, Chair


Adam T. Sampson


Bryan T. Pennington



Board of Appeals of Baltimore County

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September 20, 2022

Benedict J. Frederick III, CCIM
Ben Frederick Realty Inc.
3121 Saint Paul Street, Suite 26
Baltimore, Maryland 21218

RE: In the Matter of: *Thomas Hinkey – Petitioner*
Case No.: 21-270-SPH

Dear Mr. Frederick:

Enclosed please find a copy of the final Opinion and Order issued this date by the Board of Appeals of Baltimore County in the above subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **WITH A PHOTOCOPY PROVIDED TO THIS OFFICE CONCURRENT WITH FILING IN CIRCUIT COURT.** Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

A handwritten signature in cursive script that reads "Sunny Cannington Hay".

Krysundra "Sunny" Cannington
Administrator

KLC/taz
Enclosure

c: Thomas Hinkey
David M. Beall
Steven Stormont
Office of People's Counsel
Paul M. Mayhew, Managing Administrative Law Judge
Stephen Lafferty, Director/Department of Planning
C. Pete Gutwald, Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
James R. Benjamin, Jr., County Attorney/Office of Law